

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2895

Introduced by Assembly Member Roger Hernández

March 1, 2016

An act to amend, repeal, and add Section 6401.7 of the Labor Code, relating to employment safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 2895, as amended, Roger Hernández. Employee safety: injury prevention programs.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

The act requires every employer to establish, implement, and maintain an effective injury prevention program. The act requires the program to be written, except as specified, and to include certain elements. The act requires the employer to identify a person responsible for implementing the program and to correct unsafe and unhealthy conditions and work practices in a timely manner based on the severity of the hazard.

This bill would, commencing July 1, 2017, require an employer to keep a complete, updated copy of the written injury prevention program at each worksite and to make it available to any employee upon oral request. The bill would also require an employer to ~~provide~~ *inform each employee and each new hire of the availability of, and of the employee's*

rights with respect to inspecting and receiving, a copy of the written injury prevention program, or a summary thereof, to each employee and each new hire, as specified.

The bill also would require an employer who receives a written request for a copy of the written injury prevention program from a current employee, or his or her authorized representative, to comply within 5 business days and to provide the copy at no cost. The bill would make a violation of this requirement an ~~infraction~~ *infraction*. ~~The bill would impose~~ *entitle an employee to recover a civil penalty in a civil action* for failure by an employer to comply with ~~the employee's written demand for compliance with this requirement~~ *requirement unless the division has cited the employer for failing to comply before the employee undertakes to recover the penalty*.

Because this bill creates a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6401.7 of the Labor Code is amended to
- 2 read:
- 3 6401.7. (a) Every employer shall establish, implement, and
- 4 maintain an effective injury prevention program. The program
- 5 shall be written, except as provided in subdivision (e), and shall
- 6 include, but not be limited to, the following elements:
- 7 (1) Identification of the person or persons responsible for
- 8 implementing the program.
- 9 (2) The employer's system for identifying and evaluating
- 10 workplace hazards, including scheduled periodic inspections to
- 11 identify unsafe conditions and work practices.
- 12 (3) The employer's methods and procedures for correcting
- 13 unsafe or unhealthy conditions and work practices in a timely
- 14 manner.

1 (4) An occupational health and safety training program designed
2 to instruct employees in general safe and healthy work practices
3 and to provide specific instruction with respect to hazards specific
4 to each employee's job assignment.

5 (5) The employer's system for communicating with employees
6 on occupational health and safety matters, including provisions
7 designed to encourage employees to inform the employer of
8 hazards at the worksite without fear of reprisal.

9 (6) The employer's system for ensuring that employees comply
10 with safe and healthy work practices, which may include
11 disciplinary action.

12 (b) The employer shall correct unsafe and unhealthy conditions
13 and work practices in a timely manner based on the severity of the
14 hazard.

15 (c) The employer shall train all employees when the training
16 program is first established, all new employees, and all employees
17 given a new job assignment, and shall train employees whenever
18 new substances, processes, procedures, or equipment are introduced
19 to the workplace and represent a new hazard, and whenever the
20 employer receives notification of a new or previously unrecognized
21 hazard. An employer in the construction industry who is required
22 to be licensed under Chapter 9 (commencing with Section 7000)
23 of Division 3 of the Business and Professions Code may use
24 employee training provided to the employer's employees under a
25 construction industry occupational safety and health training
26 program approved by the division to comply with the requirements
27 of subdivision (a) relating to employee training, and shall only be
28 required to provide training on hazards specific to an employee's
29 job duties.

30 (d) The employer shall keep appropriate records of steps taken
31 to implement and maintain the program. An employer in the
32 construction industry who is required to be licensed under Chapter
33 9 (commencing with Section 7000) of Division 3 of the Business
34 and Professions Code may use records relating to employee training
35 provided to the employer in connection with an occupational safety
36 and health training program approved by the division to comply
37 with this subdivision, and shall only be required to keep records
38 of those steps taken to implement and maintain the program with
39 respect to hazards specific to an employee's job duties.

(e) (1) The standards board shall adopt a standard setting forth the employer's duties under this section, on or before January 1, 1991, consistent with the requirements specified in subdivisions (a), (b), (c), and (d). The standards board, in adopting the standard, shall include substantial compliance criteria for use in evaluating an employer's injury prevention program. The board may adopt less stringent criteria for employers with few employees and for employers in industries with insignificant occupational safety or health hazards.

(2) Notwithstanding subdivision (a), for employers with fewer than 20 employees who are in industries that are not on a designated list of high hazard industries and who have a workers' compensation experience modification rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries that are on a designated list of low hazard industries, the board shall adopt a standard setting forth the employer's duties under this section consistent with the requirements specified in subdivisions (a), (b), and (c), except that the standard shall only require written documentation to the extent of documenting the person or persons responsible for implementing the program pursuant to paragraph (1) of subdivision (a), keeping a record of periodic inspections pursuant to paragraph (2) of subdivision (a), and keeping a record of employee training pursuant to paragraph (4) of subdivision (a). To any extent beyond the specifications of this subdivision, the standard shall not require the employer to keep the records specified in subdivision (d).

(3) (A) The division shall establish a list of high hazard industries using the methods prescribed in Section 6314.1 for identifying and targeting employers in high hazard industries. For purposes of this subdivision, the "designated list of high hazard industries" shall be the list established pursuant to this paragraph.

(B) For the purpose of implementing this subdivision, the Department of Industrial Relations shall periodically review, and as necessary revise, the list.

(4) For the purpose of implementing this subdivision, the Department of Industrial Relations shall also establish a list of low hazard industries, and shall periodically review, and as necessary revise, that list.

(f) The standard adopted pursuant to subdivision (e) shall specifically permit employer and employee occupational safety

1 and health committees to be included in the employer's injury
2 prevention program. The board shall establish criteria for use in
3 evaluating employer and employee occupational safety and health
4 committees. The criteria shall include minimum duties, including
5 the following:

6 (1) Review of the employer's periodic, scheduled worksite
7 inspections; investigation of causes of incidents resulting in injury,
8 illness, or exposure to hazardous substances; and investigation of
9 any alleged hazardous condition brought to the attention of any
10 committee member. When determined necessary by the committee,
11 the committee may conduct its own inspections and investigations.

12 (2) (A) Upon request from the division, verification of
13 abatement action taken by the employer as specified in division
14 citations.

15 (B) If an employer's occupational safety and health committee
16 meets the criteria established by the board, it shall be presumed to
17 be in substantial compliance with paragraph (5) of subdivision (a).

18 (g) The division shall adopt regulations specifying the
19 procedures for selecting employee representatives for
20 employer-employee occupational health and safety committees
21 when these procedures are not specified in an applicable collective
22 bargaining agreement. No employee or employee organization
23 shall be held liable for any act or omission in connection with a
24 health and safety committee.

25 (h) The employer's injury prevention program, as required by
26 this section, shall cover all of the employer's employees and all
27 other workers who the employer controls or directs and directly
28 supervises on the job to the extent these workers are exposed to
29 worksite and job assignment specific hazards. Nothing in this
30 subdivision shall affect the obligations of a contractor or other
31 employer that controls or directs and directly supervises its own
32 employees on the job.

33 (i) When a contractor supplies its employee to a state agency
34 employer on a temporary basis, the state agency employer may
35 assess a fee upon the contractor to reimburse the state agency for
36 the additional costs, if any, of including the contract employee
37 within the state agency's injury prevention program.

38 (j) (1) The division shall prepare a Model Injury and Illness
39 Prevention Program for Non-High-Hazard Employment, and shall
40 make copies of the model program prepared pursuant to this

1 subdivision available to employers, upon request, for posting in
2 the workplace. An employer who adopts and implements the model
3 program prepared by the division pursuant to this paragraph in
4 good faith shall not be assessed a civil penalty for the first citation
5 for a violation of this section issued after the employer's adoption
6 and implementation of the model program.

7 (2) For purposes of this subdivision, the division shall establish
8 a list of non-high-hazard industries in California. These industries,
9 identified by their Standard Industrial Classification Codes, as
10 published by the United States Office of Management and Budget
11 in the Manual of Standard Industrial Classification Codes, 1987
12 Edition, are apparel and accessory stores (Code 56), eating and
13 drinking places (Code 58), miscellaneous retail (Code 59), finance,
14 insurance, and real estate (Codes 60–67), personal services (Code
15 72), business services (Code 73), motion pictures (Code 78) except
16 motion picture production and allied services (Code 781), legal
17 services (Code 81), educational services (Code 82), social services
18 (Code 83), museums, art galleries, and botanical and zoological
19 gardens (Code 84), membership organizations (Code 86),
20 engineering, accounting, research, management, and related
21 services (Code 87), private households (Code 88), and
22 miscellaneous services (Code 89). To further identify industries
23 that may be included on the list, the division shall also consider
24 data from a rating organization, as defined in Section 11750.1 of
25 the Insurance Code, and all other appropriate information. The list
26 shall be established by June 30, 1994, and shall be reviewed, and
27 as necessary revised, biennially.

28 (3) The division shall prepare a Model Injury and Illness
29 Prevention Program for Employers in Industries with Intermittent
30 Employment, and shall determine which industries have historically
31 utilized seasonal or intermittent employees. An employer in an
32 industry determined by the division to have historically utilized
33 seasonal or intermittent employees shall be deemed to have
34 complied with the requirements of subdivision (a) with respect to
35 a written injury prevention program if the employer adopts the
36 model program prepared by the division pursuant to this paragraph
37 and complies with any instructions relating thereto.

38 (k) With respect to any county, city, city and county, or district,
39 or any public or quasi-public corporation or public agency therein,
40 including any public entity, other than a state agency, that is a

1 member of, or created by, a joint powers agreement, subdivision
2 (d) shall not apply.

3 (l) Every workers' compensation insurer shall conduct a review,
4 including a written report as specified below, of the injury and
5 illness prevention program (IIPP) of each of its insureds with an
6 experience modification of 2.0 or greater within six months of the
7 commencement of the initial insurance policy term. The review
8 shall determine whether the insured has implemented all of the
9 required components of the IIPP, and evaluate their effectiveness.
10 The training component of the IIPP shall be evaluated to determine
11 whether training is provided to line employees, supervisors, and
12 upper level management, and effectively imparts the information
13 and skills each of these groups needs to ensure that all of the
14 insured's specific health and safety issues are fully addressed by
15 the insured. The reviewer shall prepare a detailed written report
16 specifying the findings of the review and all recommended changes
17 deemed necessary to make the IIPP effective. The reviewer shall
18 be or work under the direction of a licensed California professional
19 engineer, certified safety professional, or a certified industrial
20 hygienist.

21 (m) This section shall remain in effect only until July 1, 2017,
22 and as of that date is repealed.

23 SEC. 2. Section 6401.7 is added to the Labor Code, to read:

24 6401.7. (a) Every employer shall establish, implement, and
25 maintain an effective injury prevention program. The program
26 shall be written, except as provided in subdivision (f), and shall
27 include, but not be limited to, the following elements:

28 (1) Identification of the person or persons responsible for
29 implementing the program.

30 (2) The employer's system for identifying and evaluating
31 workplace hazards, including scheduled periodic inspections to
32 identify unsafe conditions and work practices.

33 (3) The employer's methods and procedures for correcting
34 unsafe or unhealthy conditions and work practices in a timely
35 manner.

36 (4) An occupational health and safety training program designed
37 to instruct employees in general safe and healthy work practices
38 and to provide specific instruction with respect to hazards specific
39 to each employee's job assignment.

1 (5) The employer's system for communicating with employees
2 on occupational health and safety matters, including provisions
3 designed to encourage employees to inform the employer of
4 hazards at the worksite without fear of reprisal.

5 (6) The employer's system for ensuring that employees comply
6 with safe and healthy work practices, which may include
7 disciplinary action.

8 (b) The employer shall correct unsafe and unhealthy conditions
9 and work practices in a timely manner based on the severity of the
10 hazard.

11 (c) The employer shall train all employees when the training
12 program is first established, all new employees, and all employees
13 given a new job assignment, and shall train employees whenever
14 new substances, processes, procedures, or equipment are introduced
15 to the workplace and represent a new hazard, and whenever the
16 employer receives notification of a new or previously unrecognized
17 hazard. An employer in the construction industry who is required
18 to be licensed under Chapter 9 (commencing with Section 7000)
19 of Division 3 of the Business and Professions Code may use
20 employee training provided to the employer's employees under a
21 construction industry occupational safety and health training
22 program approved by the division to comply with the requirements
23 of subdivision (a) relating to employee training, and shall only be
24 required to provide training on hazards specific to an employee's
25 job duties.

26 (d) The employer shall keep appropriate records of steps taken
27 to implement and maintain the program. An employer in the
28 construction industry who is required to be licensed under Chapter
29 9 (commencing with Section 7000) of Division 3 of the Business
30 and Professions Code may use records relating to employee training
31 provided to the employer in connection with an occupational safety
32 and health training program approved by the division to comply
33 with this subdivision, and shall only be required to keep records
34 of those steps taken to implement and maintain the program with
35 respect to hazards specific to an employee's job duties.

36 (e) (1) An employer shall keep an up-to-date complete copy of
37 the written injury prevention program referred to in subdivision
38 (a) at each worksite, and shall make it available for inspection by
39 any current employee or by the division upon an oral request. The
40 worksite copy shall be in English, and, if the language spoken by

1 the majority of the employees at the worksite is not English, the
2 worksite copy shall also be in the language spoken by the majority
3 of the employees at the worksite.

4 ~~(2) Upon the operative date of this section, Commencing July~~
5 ~~1, 2017, an employer shall provide a complete copy of the written~~
6 ~~injury prevention program referred to in subdivision (a) to inform~~
7 ~~each current employee, and, after the operative date of this section,~~
8 ~~an employer shall provide a complete copy of the written injury~~
9 ~~prevention program to each new employee at the time of hire. The~~
10 ~~copy of the written injury prevention program shall be in English~~
11 ~~or, if the language spoken by the majority of the employees at the~~
12 ~~worksite is not English, an employee who requests a copy of the~~
13 ~~written injury prevention program shall be provided with a copy~~
14 ~~in the language spoken by the majority of the employees at the~~
15 ~~worksite. If the written injury prevention program referred to in~~
16 ~~subdivision (a) exceeds a total of 50 pages, the employer, in lieu~~
17 ~~of providing a copy as required under this paragraph, shall provide~~
18 ~~a complete summary that addresses the requirements referred to~~
19 ~~in subdivision (a), which shall be in English or, if the language~~
20 ~~spoken by the majority of the employees at the worksite is not~~
21 ~~English, an employee who requests a copy of the written injury~~
22 ~~prevention program shall be provided with a summary that is in~~
23 ~~the language spoken by the majority of the employees at the~~
24 ~~worksite. hire, in a language understood by the employee, that the~~
25 ~~employer has a complete copy of the written injury prevention~~
26 ~~program referred to in subdivision (a) at the worksite; that the~~
27 ~~employee has a right to inspect it; and that the employee or his or~~
28 ~~her authorized representative has a right to submit a written~~
29 ~~request to receive a complete copy of the written injury prevention~~
30 ~~program referred to in subdivision (a) within five business days~~
31 ~~at no charge.~~

32 (3) An employer who receives a written request for a complete
33 copy of the written injury prevention program referred to in
34 subdivision (a) from a current employee, or his or her authorized
35 representative, shall comply with the request as soon as practicable,
36 but no later than five business days from the date a request pursuant
37 to this paragraph is received. The copy of the written injury
38 prevention program shall be provided to the current employee, or
39 to his or her authorized representative, at no cost. An employer
40 may designate the person to whom a request under this paragraph

1 is to be made. A violation of this paragraph is an infraction.
2 Impossibility of performance, not caused by or a result of a
3 violation of law, shall be an affirmative defense for an employer
4 in any action alleging a violation of this paragraph. For purposes
5 of this paragraph, an “authorized representative” means a person
6 authorized in writing by a current employee to receive a copy of
7 the written injury prevention program referred to in subdivision
8 (a).

9 (4) A failure by an employer to comply with *a written demand*
10 *from the employee that the employer comply with* paragraph (3)
11 entitles an employee to recover *in a civil action* a
12 seven-hundred-fifty-dollar (\$750) penalty from the ~~employer.~~
13 *employer, provided that the division has not cited the employer*
14 *for a failure to comply with paragraph (3) prior to the employee*
15 *undertaking a civil action to recover the penalty.*

16 (f) (1) The standards board shall adopt a standard setting forth
17 the employer’s duties under this section, on or before January 1,
18 1991, consistent with the requirements specified in subdivisions
19 (a), (b), (c), ~~(d)~~, and ~~(e)~~. (d). The standards board, in adopting the
20 standard, shall include substantial compliance criteria for use in
21 evaluating an employer’s injury prevention program. The board
22 may adopt less stringent criteria for employers with few employees
23 and for employers in industries with insignificant occupational
24 safety or health hazards.

25 (2) Notwithstanding subdivision (a), for employers with fewer
26 than 20 employees who are in industries that are not on a
27 designated list of high hazard industries and who have a workers’
28 compensation experience modification rate of 1.1 or less, and for
29 any employers with fewer than 20 employees who are in industries
30 that are on a designated list of low hazard industries, the board
31 shall adopt a standard setting forth the employer’s duties under
32 this section consistent with the requirements specified in
33 subdivisions (a), (b), and (c), except that the standard shall only
34 require written documentation to the extent of documenting the
35 person or persons responsible for implementing the program
36 pursuant to paragraph (1) of subdivision (a), keeping a record of
37 periodic inspections pursuant to paragraph (2) of subdivision (a),
38 and keeping a record of employee training pursuant to paragraph
39 (4) of subdivision (a). To any extent beyond the specifications of

1 this subdivision, the standard shall not require the employer to
2 keep the records specified in subdivision (d).

3 (3) (A) The division shall establish a list of high hazard
4 industries using the methods prescribed in Section 6314.1 for
5 identifying and targeting employers in high hazard industries. For
6 purposes of this subdivision, the “designated list of high hazard
7 industries” shall be the list established pursuant to this paragraph.

8 (B) For the purpose of implementing this subdivision, the
9 Department of Industrial Relations shall periodically review, and
10 as necessary revise, the list.

11 (4) For the purpose of implementing this subdivision, the
12 Department of Industrial Relations shall also establish a list of low
13 hazard industries, and shall periodically review, and as necessary
14 revise, that list.

15 (g) The standard adopted pursuant to subdivision (f) shall
16 specifically permit employer and employee occupational safety
17 and health committees to be included in the employer’s injury
18 prevention program. The board shall establish criteria for use in
19 evaluating employer and employee occupational safety and health
20 committees. The criteria shall include minimum duties, including
21 the following:

22 (1) Review of the employer’s periodic, scheduled worksite
23 inspections; investigation of causes of incidents resulting in injury,
24 illness, or exposure to hazardous substances; and investigation of
25 any alleged hazardous condition brought to the attention of any
26 committee member. When determined necessary by the committee,
27 the committee may conduct its own inspections and investigations.

28 (2) (A) Upon request from the division, verification of
29 abatement action taken by the employer as specified in division
30 citations.

31 (B) If an employer’s occupational safety and health committee
32 meets the criteria established by the board, it shall be presumed to
33 be in substantial compliance with paragraph (5) of subdivision (a).

34 (h) The division shall adopt regulations specifying the
35 procedures for selecting employee representatives for
36 employer-employee occupational health and safety committees
37 when these procedures are not specified in an applicable collective
38 bargaining agreement. No employee or employee organization
39 shall be held liable for any act or omission in connection with a
40 health and safety committee.

1 (i) The employer's injury prevention program, as required by
2 this section, shall cover all of the employer's employees and all
3 other workers who the employer controls or directs and directly
4 supervises on the job to the extent these workers are exposed to
5 worksite and job assignment specific hazards. Nothing in this
6 subdivision shall affect the obligations of a contractor or other
7 employer that controls or directs and directly supervises its own
8 employees on the job.

9 (j) When a contractor supplies its employee to a state agency
10 employer on a temporary basis, the state agency employer may
11 assess a fee upon the contractor to reimburse the state agency for
12 the additional costs, if any, of including the contract employee
13 within the state agency's injury prevention program.

14 (k) (1) The division shall prepare a Model Injury and Illness
15 Prevention Program for Non-High-Hazard Employment, and shall
16 make copies of the model program prepared pursuant to this
17 subdivision available to employers, upon request, for posting in
18 the workplace. An employer who adopts and implements the model
19 program prepared by the division pursuant to this paragraph in
20 good faith shall not be assessed a civil penalty for the first citation
21 for a violation of this section issued after the employer's adoption
22 and implementation of the model program.

23 (2) For purposes of this subdivision, the division shall establish
24 a list of non-high-hazard industries in California. These industries,
25 identified by their Standard Industrial Classification Codes, as
26 published by the United States Office of Management and Budget
27 in the Manual of Standard Industrial Classification Codes, 1987
28 Edition, are apparel and accessory stores (Code 56), eating and
29 drinking places (Code 58), miscellaneous retail (Code 59), finance,
30 insurance, and real estate (Codes 60–67), personal services (Code
31 72), business services (Code 73), motion pictures (Code 78) except
32 motion picture production and allied services (Code 781), legal
33 services (Code 81), educational services (Code 82), social services
34 (Code 83), museums, art galleries, and botanical and zoological
35 gardens (Code 84), membership organizations (Code 86),
36 engineering, accounting, research, management, and related
37 services (Code 87), private households (Code 88), and
38 miscellaneous services (Code 89). To further identify industries
39 that may be included on the list, the division shall also consider
40 data from a rating organization, as defined in Section 11750.1 of

1 the Insurance Code, and all other appropriate information. The list
2 shall be established by June 30, 1994, and shall be reviewed, and
3 as necessary revised, biennially.

4 (3) The division shall prepare a Model Injury and Illness
5 Prevention Program for Employers in Industries with Intermittent
6 Employment, and shall determine which industries have historically
7 utilized seasonal or intermittent employees. An employer in an
8 industry determined by the division to have historically utilized
9 seasonal or intermittent employees shall be deemed to have
10 complied with the requirements of subdivision (a) with respect to
11 a written injury prevention program if the employer adopts the
12 model program prepared by the division pursuant to this paragraph
13 and complies with any instructions relating thereto.

14 (l) With respect to any county, city, city and county, or district,
15 or any public or quasi-public corporation or public agency therein,
16 including any public entity, other than a state agency, that is a
17 member of, or created by, a joint powers agreement, subdivision
18 (d) shall not apply.

19 (m) Every workers' compensation insurer shall conduct a
20 review, including a written report as specified below, of the injury
21 and illness prevention program (IIPP) of each of its insureds with
22 an experience modification of 2.0 or greater within six months of
23 the commencement of the initial insurance policy term. The review
24 shall determine whether the insured has implemented all of the
25 required components of the IIPP, and evaluate their effectiveness.
26 The training component of the IIPP shall be evaluated to determine
27 whether training is provided to line employees, supervisors, and
28 upper level management, and effectively imparts the information
29 and skills each of these groups needs to ensure that all of the
30 insured's specific health and safety issues are fully addressed by
31 the insured. The reviewer shall prepare a detailed written report
32 specifying the findings of the review and all recommended changes
33 deemed necessary to make the IIPP effective. The reviewer shall
34 be or work under the direction of a licensed California professional
35 engineer, certified safety professional, or a certified industrial
36 hygienist.

37 (n) This section shall become operative on July 1, 2017.

38 SEC. 3. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 district will be incurred because this act creates a new crime or
2 infraction, eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section 17556 of
4 the Government Code, or changes the definition of a crime within
5 the meaning of Section 6 of Article XIII B of the California
6 Constitution.

O